

MONTANA LEGISLATIVE HISTORY

Chapter 803 19 91

Bill H _____ S 204 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 06 ☒ C

Mar 09 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 11 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 08 ☒ C

Feb 12 ☒ C

_____ ☐ C

_____ ☐ C

Feb 12 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

A Conference Committee was appointed, but its minutes
were not recorded.

3/07	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED	91	0
3/11	3RD READING CONCURRED	98	0
	RETURNED TO SENATE		
3/14	SIGNED BY PRESIDENT		
3/15	SIGNED BY SPEAKER		
3/15	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 89		

EFFECTIVE DATE: 3/19/91

SB 203 INTRODUCED BY HARDING, ET AL.

REQUIRE COUNTY-EMPLOYED COURT REPORTERS TO DEPOSIT
FEES WITH COUNTY

1/25	INTRODUCED		
1/25	REFERRED TO JUDICIARY		
1/26	FIRST READING		
1/26	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE PRINTED		
1/31	FISCAL NOTE RECEIVED		
2/20	TABLED IN COMMITTEE		

SB 204 INTRODUCED BY GAGE

PROVIDE ALTERNATIVE SENTENCING FOR FELONY OFFENSES
RELATED TO DANGEROUS DRUGS
BY REQUEST OF BOARD OF CRIME CONTROL

1/25	INTRODUCED		
1/25	REFERRED TO JUDICIARY		
1/26	FIRST READING		
2/08	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	49	0
2/14	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/15	FIRST READING		
2/15	REFERRED TO JUDICIARY		
3/06	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/12	2ND READING CONCURRED	67	31
3/14	3RD READING CONCURRED	79	21
	RETURNED TO SENATE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS NOT CONCURRED	47	0
3/28	CONFERENCE COMMITTEE APPOINTED		
4/20	CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/23	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
	HOUSE		
4/03	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	83	6
4/23	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	86	9
4/29	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 802		

EFFECTIVE DATE: 10/01/91

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 6, 1991, at 9:06 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 204 ALTERNATIVE SENTENCING FOR DANGEROUS DRUG OFFENSES

Presentation and Opening Statement by Sponsor:

SEN. GAGE, SENATE DISTRICT 5, stated that this bill relates to alternative sentencing for people who are convicted of dangerous drug offenses.

Proponents' Testimony:

John Connor, Board of Crime Control - Drug Strategy Committee, stated that this bill is a result of study effort by the Drug Strategy Committee. He stated that the committee supports this kind of legislation because it is necessary to address the kinds of concerns regarding problems with addiction. This bill offers some alternatives for the court's consideration in cases that may be appropriate. There are provisions in the bill that make it mandatory that certain things be carried out. Mr. Connor stated that there are some amendments to the bill that were put on in the Senate. The amendments were suggested by the Drug Strategy Committee when the bill was heard in the Senate. The bill, in general, allows that fines can be considered as independent punishment and available where no fine is now provided by statute. This bill is needed and will not cause much expense on the local level or to the state. The Drug Strategy Committee encourages a do pass consideration.

Ed Hall, Administrator - Montana Board of Crime Control, stated that the Drug Strategy Task Force is a 15 member committee that represents drug treatment, prosecutors, law enforcement, at local and state levels. It is chaired by Flathead County Attorney, Ted Lympus. The Task Force is designed to implement for Montana, the Montana version of the nations Drug Strategy, put together by the Bush Administration. SB 204 is designed as a tool to help the Judiciary build some additional flexibility in our sentencing alternatives. He stated that these tools include electronic monitoring, home detention, community service, and intensive supervision. The concept is to recognize that the emphasis of the war of drugs is placing on enforcement and apprehension has an impact on the correction system. The prisons are already over crowded and this will provide an alternative for the courts.

Dan Russell, Administrator - Division of Corrections, stated that this bill is consistent with the direction the Division is heading in the effort to help prison overcrowding. SB 204 provides for alternative sentencing for some offenses currently requiring a mandatory minimum sentence and incarceration and legitimizes, in statute, the current program of intensive supervision. Community service programs are encouraged as a viable sentence. The Division of Corrections urges the committee's support of SB 204.

Harley Warner, Montana Association of Churches, gave written testimony in favor of SB 204. EXHIBIT 1

Michael Sherwood, Montana Trial Lawyers Association, stated that this bill allows the courts to do what they are already doing. Mr. Sherwood said, "If the state feels that they need this law for purposes of legitimizing the program or qualifying for Federal funds then we don't have a problem with it." Mr. Sherwood stated that on page 5 there is immunity language that protects the public but will still allow immunity from a suit.

Opponents' Testimony: none

Questions From Committee Members:

REP. MESSMORE asked John Connor who pays for the treatment in the community centers? Mr. Connor stated that if the defendant had the means to pay, the court would make him pay it. If the defendant did not have the money, the state would then pay.

REP. MEASURE asked Michael Sherwood if he would address any type of relationship between 2b on page 2 and the immunity from liability? Mr. Sherwood that his reading of the bill seemed that this language applied only to the community services that are set forth in 2C, 2D. He felt it would not apply to 2B.

REP. TOOLE asked John Connor if is there another immunity provision for other defendants who are under supervision? Mr. Connor stated that there is only one that he is aware of. REP. TOOLE asked if this is a first in a series of immunity bills that grant immunity for inmates? Mr. Connor stated that the County attorney's did not feel that was true. REP. TOOLE asked how was it justified to single out those particular types of people for immunity? Mr. Connor stated that the Association was only looking at this from the Drug Strategy view.

Closing by Sponsor: none

HEARING ON HB 934
JUDICIAL DISTRICT ALIGNMENT STUDY

Presentation and Opening Statement by Sponsor:

REP. THOMAS, HOUSE DISTRICT 62, stated that the state currently has 36 District Judges. He feels there is a strong need to create this Judicial provision. The bill sets up a Judicial District Study Commission and authorizes funding for a new judicial district judge. He handed the committee a report that showed the caseloads of the current Judicial Districts. EXHIBIT 2 He also submitted a letter from Robert Sullivan, President of the Montana Bar Association supporting the need for more Judicial District Judges. EXHIBIT 3

Proponents' Testimony:

Jerry Allen, Ravalli County Commissioner, stated that there are several proponents from Ravalli County and the County is in full support of the bill. He stated that the size of Ravalli County is growing and the County feels it is time for a new judicial district.

Steve Powell, Ravalli County Commissioner, stated that this bill is very important to his constituents in Ravalli County. "Our

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-6-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		



EXHIBIT 1
DATE 3-6-91
SB 204

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

PHONE: (406) 442-5761

Date Submitted: March 6, 1991

Bill Number: SB 204

Submitted by: Harley E. Warner

WORKING TOGETHER:

American Baptist Churches
of the Northwest

Christian Churches
of Montana
(Disciples of Christ)

Episcopal Church
Diocese of Montana

Evangelical Lutheran
Church in America
Montana Synod

Presbyterian Church (U. S. A.)
Glacier Presbytery

Presbyterian Church (U. S. A.)
Yellowstone Presbytery

Roman Catholic Diocese
of Great Falls - Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
Mt.-N. Wyo. Cont.

United Methodist Church
Yellowstone Conference

Chair, members of the committee, for the record I am Harley Warner. I am here representing the Montana Association of Churches.

We feel that no offender should be subjected to more custody and security than he or she needs. We agree that the majority of drug offenders do not pose a substantial threat to society, and can be effectively dealt with in the community.

Community based drug treatment and drug education programs and "intensive probation" should help the offender to remain drug free.

Senate Bill 204 addresses some of our corrections concerns, therefore we rise in support of Senate Bill 204.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. SB 204
 DATE 3-6-91 SPONSOR(S) SEN. Gage

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPP
Ed Hall	MBCC	SB 204		✓
EARLEY WARNER	MONIT. ASSOC. OF CHURCHES	SB 204		✓
John Connor	MT CTY Attys Assn	SB 204		✓
DARRELL Beckstrom	Motor Vehicle Div.	204		✓
Michael J Sherwood	MTCA	204		✓ as Gage

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORM ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Motion/Vote: REP. LEE MOVED BE CONCURRED IN AS AMENDED. Motion carried 15 to 4 with Rep's: Russell, Whalen, Measure, and Brown voting no.

EXECUTIVE ACTION ON SB 204

Motion: REP. MEASURE MOVED SB 204 BE CONCURRED IN.

Motion: REP. MEASURE moved to amend SB 204 by striking section 3 and section 7 and changing the title appropriately.

Discussion: REP. MEASURE stated his amendment is for the same reasons we have talked about regarding immunity all session.

Vote: Motion carried 11 to 9. EXHIBIT 2

Motion: REP. GOULD moved to amend SB 204 and asked John MacMaster to explain it to the committee.

Discussion: John MacMaster stated that the amendment would be on page 1, line 6, after the word "for" put in the word "first". On line 22, after the word "eight" and before the word "measure" put in the word "first". On page 4, it states the length of time you will lose your license on second and subsequent convictions and will have to be amended to apply to any conviction except for the first.

CHAIRMAN STRIZICH stated that we should try and allow some alternatives by limiting it to first offense it really crimps the effective use of this kind of a law. He stated he thought we should leave it the way it came in.

Vote: Motion failed.

Motion: REP. BROWN moved to amend SB 204 on page 1, line 22 after "a" insert "felony" and line 6 after "4", insert "felony".

Discussion: REP. BROWN stated that this penalty just applies to felony offenses. REP. BROWN emphasized he didn't want to make this kind of counselling mandatory for minor misdemeanor possession.

Vote: Motion carried 13 to 6. EXHIBIT 3

Motion/Vote: REP. LEE MOVED SB 204 BE CONCURRED IN AS AMENDED. Motion carried 19 to 1 with Rep. Gould voting no.

EXECUTIVE ACTION ON SB 58

Motion: REP. BROWN MOVED SB 58 BE CONCURRED IN.

Motion: REP. RICE moved to amend SB 58 with the Department of

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-9-91

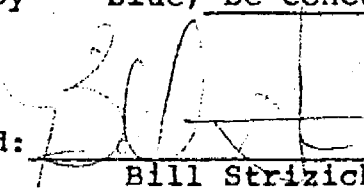
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR			/
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE			/
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 204 (third reading copy -- blue) be concurred in as amended.

Signed: 
Bill Strizich, Chairman

Carried by: Rep. Boharski

And, that such amendments read:

1. Title, line 6.

Following: "FOR"

Insert: "FELONY"

2. Title, lines 7 and 8.

Strike: "PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN CIRCUMSTANCES;"

3. Page 1, line 22.

Following: "drug"

Insert: "felony"

4. Page 4, line 20 through page 5, line 10.

Strike: section 3 in its entirety

Renumber: subsequent sections

5. Page 8, line 25.

Page 9, line 3.

Strike: "through 4"

Insert: "and 3"

6. Page 9, lines 4 through 7.

Strike: section 7 in its entirety

EXHIBIT 2DATE 3-9-91HB 204

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-9-91BILL NO. SB#204

NUMBER _____

MOTION: _____

Measure move OP Amendment

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	<i>mv</i>
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	<i>my</i>	<i>✓</i>
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	<i>11</i>	<i>9</i>

EXHIBIT 3
DATE 3-9-91
HB 204

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-9-91 BILL NO. SB 204 NUMBER _____

MOTION: Brown amended

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO	/	
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	/
TOTAL	13	6

Senator Crippen asked how fast the cost of a new machine (\$5000) could be recouped. Gary Beck replied that average net income is \$10,000 to \$15,000 annually. He explained this amount is split between the operator and distributor, and that the machines are usually paid for in less than one year.

Senator Grosfield asked what a typical split is. Gary Beck replied that it was traditionally 50/50. He said competition has changed it to 60 percent to the owner and 40 percent to the operator.

Closing by the bill's sponsor:

Senator Yellowtail told the Committee this is a policy issue addressing the matter of potential monopoly. He admitted 500 machines may be rather arbitrary, and said he was sorry that Gary Beck chose to call the bill obnoxious. Senator Yellowtail stated it was not his intent to take Larry Lippman out of competition, and said that if the cap is removed then the potential for monopoly is there. He said these are the choices.

HEARING ON SENATE BILL 204

Presentation and Opening Statement by Sponsor:

Senator Del Gage, District 5, said SB 204 was requested by the Board of Crime Control concerning sentencing alternatives.

Proponents' Testimony:

John Connor, Department of Justice (DOJ), Board of Crime Control/Drug Strategy Commission, said the Commission exists for the purpose of obtaining anti-drug abuse funds and for establishing a statewide drug abuse strategy. He said the need to look at sentencing alternatives was realized during the interim.

John Connor said the bill expands 45-9-202, MCA, by offering discretionary alternatives to the court. He told the Committee the bill provides that the court can impose fines; allows commitment to residential treatment facilities for not more than two years; allows community service and drug treatment program sentences. He said these options are a condition to deferred and suspended sentences, and provide for intensive supervision through probation offices.

John Connor explained that the rest of the provisions follow the concept of rehabilitation rather than penalizing. He stated the bill contains immunity from liability as communities are very reluctant to get involved in community service. John Connor added that language can be revised or brought to the attention of the offender at the time of sentencing. He said immunity does not apply to abuse or to gross neglect.

John Connor advised the Committee he believes the bill applies a sensible approach to a serious matter.

Harley Warner, Montana Association of Churches, read from prepared testimony in support of the bill (Exhibit #8).

Ed Hall, Drug Strategy Commission, Board of Crime Control, said SB 204 is the second of three pieces of legislation. He encouraged the Committee not to think of this legislation in terms of lesser sentences, but as optional sentencing (Exhibit #9).

Ed Hall said he was sure a greater number of states would be revoking drivers' licenses for drug offenses. He stated alternative sentencing is one more tool for the courts, and provides more flexibility for the judicial systems. Mr. Hall encouraged the Committee to support the bill.

Dan Russell, Administrator, Corrections Division, Department of Institutions (DOI), said SB 204 is consistent with DOJ and DOI efforts. He explained the bill addresses intensive supervision and encourages development and use of community service. Mr. Russell said Missoula has a pilot community service program, and urged the Committee to support the bill.

Opponents' Testimony:

Mike Sherwood, Montana Trial Lawyers, stated he was an opponent because clause 3 allows immunity (Exhibit #10). He said the bill would grant specifically developed governmental programs immunity when they are not careful in dealing with immunity.

Mr. Sherwood commented this is a poor way to handle immunity, and said another bill in the House addresses quasi-judicial immunity. He stated there are inherent hazards, requiring a conscious decision on the part of the Legislature not to grant immunity on careless auto claims.

Mike Sherwood said the bill requires people to supervise drug offenders, who are often addicts, in public service. He stated these people should be required to be as careful as they are with others in society.

Questions From Committee Members:

Chairman Pinsoneault asked Mike Sherwood if, as a defense attorney, the bill would at least provide something to avoid putting certain persons in jail. Chairman Pinsoneault said he had a problem with Mr. Sherwood's testimony. Mike Sherwood replied that as a representative of the Montana Trial Lawyers Association, clause 3 is critical to the bill. He said that as a lawyer handling 350 felony and 25 major drug cases, he is a lot like a social worker since 95 percent of his cases do not go to trial.

Mr. Sherwood explained that the client admits to charges which are usually the result of an underlying problem. He said his job is to put together a program for post-rehabilitation prior to judgement, which can mostly be done without this bill.

Chairman Pinsoneault commented that there are minimal penalties. He asked Mike Sherwood to provide an amendment to address immunity, and said he believes SB 204 is a good bill. Mike Sherwood replied he would meet with the Association on this matter.

Senator Towe stated that if sections 3 and 7 were stricken there would be no immunity. He added that as counsel for Alternatives, Inc. for the past ten years, the organization has been sued only two or three times concerning supervision. He explained that Alternative's, Inc. always had the insurance to cover the suits, and said he supported the bill.

Senator Towe asked John Connor about immunity. John Connor replied he believes sections 3 and 7 are critical to community service. He commented that he had prosecuted cases similar to those described by Mr. Sherwood, and that he believes immunity is a public policy consideration because "people sue governmental entities over virtually nothing". John Connor added that DOI experienced a lot of problems, and that without immunity, community service would be "gutted".

Senator Towe invited John Connor to come to Billings to see how Alternatives, Inc. works. John Connor replied that rural counties need something on the local level.

Senator Towe said part 1 of the Code, in 45-1-902, used to be presumptive sentencing, and is now changed to impose a fine. John Connor replied that presumptive sentencing is still in the law for persons under 21 years of age.

Senator Towe commented that lines 19-20 addresses offenders as habitual and excessive users of dangerous drugs. John Connor replied it was intended to take this language out of the bill, as some offenders are not habitual or excessive users. He said page 2 allows a lot of discretion and has intrinsic value in allowing the courts to address each case specifically.

Chairman Pinsoneault commented that Judge Davis made several comments asking that this legislation be available.

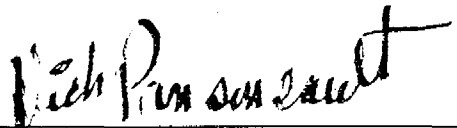
Senator Grosfield asked if the bill addresses drug testing only once each month. Dan Russell replied it ought to be more often and is now being done several times during the week. John Connor added that this language came from a model alternative sentencing act, and that maybe it should be changed.

Closing by Sponsor:

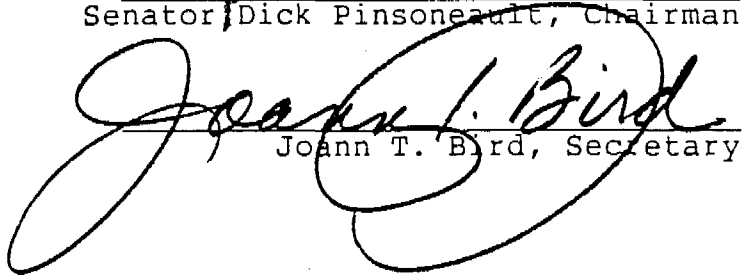
Senator Gage advised the Committee there are different towns where judges may not be convinced of these alternatives or where programs are not available. He said he believes the Committee needs to look at immunity very carefully, and that SB 204 is a good bill. Senator Gage asked the Committee to give the bill favorable consideration.

ADJOURNMENT

Adjournment At: 12:10 p.m.



Senator Dick Pinsonneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 9 Feb

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Exhibit
SB 204
2-8-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 20 day of February, 1991.

Name: HARLEY WARNER

Address: Box 745

HELENA 59634

Telephone Number: 442 - 5761

Representing whom?

MONIT. ASSOC. OF CHURCHES

Appearing on which proposal?

SB 204 SB 204

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

see attached

Exhibit 8
8 Feb 8

Montana

Association of
Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

PHONE: (406) 442-5761

Date Submitted: February 8, 1991

Bill Number: SB 204

Submitted by: Harley E. Warner

WORKING TOGETHER:

American Baptist Churches
of the Northwest

Christian Churches
of Montana
(Disciples of Christ)

Episcopal Church
Diocese of Montana

Evangelical Lutheran
Church in America
Montana Synod

Presbyterian Church (U. S. A.)
Glacier Presbytery

Presbyterian Church (U. S. A.)
Yellowstone Presbytery

Roman Catholic Diocese
of Great Falls - Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
Mt.-N. Wyo. Conf.

United Methodist Church
Yellowstone Conference

Chair, members of the committee, I am Harley Warner. I am here representing the Montana Association of Churches.

We feel that no offender should be subjected to more custody and security than he or she needs. We agree that the majority of drug offenders do not pose a substantial threat to society, and can be effectively dealt with in the community.

Community based drug treatment and drug education programs and "intensive probation" should help the offender to remain drug free.

Senate Bill 204 addresses some of our corrections concerns, therefore we rise in support of Senate Bill 204.

DRUG TASK FORCE MEMBERS

1990-1991

Marsha Armstrong
Administrative Officer
Department of Institutions
1539 Eleventh Avenue
Helena, MT 59620

Gary Carrell, Administrator
Law Enforcement Services Division
Department of Justice
303 North Roberts
Helena, MT 59620

John Connor, Jr.
Assistant Attorney General
Attorney General's Office
215 North Sanders
Helena, MT 59620

Honorable Delwyn Gage
State Senator
P.O. Box 1027
Cut Bank, MT 59427

Asst. Chief Ron Kemp
Glendive Police Department
Box 1372
Glendive, MT 59330

Ted O. Lympus
Flathead County Attorney
Flathead County Courthouse
Kalispell, MT 59901

Mike Mahoney
Deputy Warden of Treatment
Montana State Prison
500 Conley Lake Road
Deer Lodge, MT 59722-9755

Jim Oppedahl
Court Administrator
Supreme Court
215 N. Sanders, Rm. 315
Helena, MT 59620

Spencer Sartorius
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Honorable Mignon Waterman
State Senator
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EX 10
SB 204
2-8-91

Testimony of Michael J. Sherwood
MTLA
Opposing SB 204

MTLA opposes this bill due to the immunity clause found in Section Three. This bill immunizes yet another governmental agency from law suit. Court ordered community service typically takes on two forms: (1) cleaning or maintenance of public buildings and facilities, or (2) interacting with the public (often juveniles) in community activities. In either case immunization of governmental agencies from claims arising from a failure to properly supervise convicted drug offenders is poor public policy. Cleaning and maintenance is almost universally done in areas open to the public and interaction with our children should be undertaken only with the utmost care. This bill would condone the following three actions by a supervising agency:

1. A garden rake is left lying, tines up, in the grass by a participant in a community service program because the supervising agency did not bother to inventory its tools. A child falls and impales himself on the tines.

2. A supervising agency is transporting program participants to a job site. The driver runs a stop sign, collides with a vehicle having the right of way and seriously injures the occupants of that vehicle.

3. A convicted addict is allowed to speak at a high school drug education class without any review of his speech by the supervising agency. While the speech talks of the evils of cocaine, it condones marijuana use. While at the school the program participant is able to actually sell marijuana to students.

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If the state wishes to establish these programs whereby convicted drug users will inevitably interact with the public, the agencies overseeing the program participants should be required, at a minimum, to exercise due care in administering and supervising the programs.

Discussion:

Senator Halligan stated he had no feelings on the bill, and that he is a "traditionalist". He said he did not hear specifics in the bill and had problems with the fact that there appeared to be no interest in making this a better bill.

Senator Towe commented that HB 673 is a bill of the Gaming Advisory Council and would authorize blackjack and other games.

Senator Mazurek said he understood that blackjack was being removed from HB 673.

Senator Harp commented that the Committee heard from a county with ten years of drought and no oil industry, and said he believes that bringing in blackjack as an answer to economic development is a sad way to address the quality of life.

Senator Rye told the Committee he was originally in favor of blackjack, but felt he now had to vote against the bill. He added that if it were a local option, he might still be for it.

Chairman Pinsoneault advised the Committee that if blackjack were a local option, it would still be open to the reservations.

Senator Svrcek said he did not believe blackjack would benefit the highline counties, but might benefit larger towns in Cascade and Yellowstone Counties.

Senator Doherty said he believes the expansion of gambling may be warranted at some time in the future. He stated he believes both sides reacted hysterically, and that he wants to know what has happened in other areas.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Brown that SB 208 DO NOT PASS carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 204Motion:Discussion:

Amendments, Discussion, and Votes:

Valencia Lane provided amendments (Exhibit #2) requiring that \$50,000 be reduced to \$1000, that 2 years be reduced to 1 year, and that random testing be not less than once per month.

Senator Halligan made a motion that the amendments prepared by Valencia Lane be approved. The motion carried unanimously.

Senator Towe made a motion that his proposed amendments be approved (Exhibit #2a). He told the Committee that once Alternatives, Inc. in Billings got workers' compensation coverage workers' compensation was denied. He said he had no problem with immunity from individuals on the program, but was worried about people claiming damages from workers on the program. Senator Towe cited an incident where an escapee went to Great Falls and was involved in a high-speed chase where an individual's vehicle was damaged. He said that individual sued, and said the state should not have put the escapee in a position where he could escape. Senator Towe advised the Committee that this matter was settled with the insurance company.

Senator Towe cited a second case where an individual was working on a roof at Alternatives, Inc. and was severely injured by a power line. He said he did not see why communities should be immune from liability, and that it should be handled in normal sovereign immunity.

John Connor, Department of Justice, commented that he only intended that immunity cover situations where the defendant was being supervised and might sue the supervisor for certain supervisory action. He told the Committee it is almost universal that local governments won't allow community service because of fear of being sued. John Connor provided the Committee with amendments to the bill (Exhibit #1).

Chairman Pinsoneault stated he was concerned with smaller communities without the luxury of protecting themselves with insurance.

Senator Towe stated he did like the amendment whereby the supervising agency should not be the basis for the suit. John Connor replied that he believed the cost of defending suits is what gets the smaller local governments.

Senator Halligan made a substitute motion that the amendments prepared by John Connor be approved. The motion carried unanimously.

Mike Sherwood said he believes 2-1-911, MCA, addressing immunity, says automobiles are exempted whether they are insured or not. He said the subject of a recent suit in Gallatin County was determined to be a legislative act with a waiver of immunity to the extent of coverage.

Recommendation and Vote:

Senator Brown made a motion that SB 204 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 227Motion:

Senator Halligan made a motion that SB 227 be tabled.

Discussion:

Senator Mazurek commented that market control seems to be a legitimate concern.

Senator Grosfield advised the Committee that a small operator in his district who owns about 50 machines was working on a 45/55 percent split with bar owners. He said a big group came in offering 60/40 or 70/30 percent splits.

Senator Towe said he believes there is merit in the concept of limiting the number of machines before it is too late.

Senator Mazurek stated that a large number of machines in Bozeman, Billings, Missoula, and Kalispell are all in the process of changing hands. He said an application is pending from a Nevada company.

Amendments, Discussion, and Votes:Recommendation and Vote:

The motion made by Senator Halligan carried 8-4. Senators Yellowtail, Crippen, Mazurek and Brown voted no.

EXECUTIVE ACTION ON HOUSE BILL 148Motion:Discussion:

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51~~st~~ LEGISLATIVE SESSION -- 1991

Date 12 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 204 (first reading copy -- white), respectfully report that Senate Bill No. 204 be amended and as so amended do pass:

1. Page 2, line 9.

Strike: "\$50,000"

Insert: "\$1,000"

2. Page 2, lines 11 and 13.

Strike: "2 years"

Insert: "1 year"

3. Page 3, line 17.

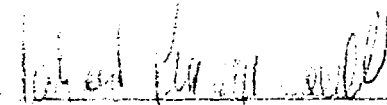
Following: "randomly"

Insert: "not less than"

4. Page 5, line 3.

Following: "."

Insert: "The immunity granted by this section applies only to lawsuits filed by the defendant against the supervising agency and its agents and employees and only to acts alleged to have occurred during the course of supervision."

Signed: 
Richard Pinsoneault, Chairman

AL 2-12-91
And. Coord.

SR 2-12 12:55
Sec. of Senate

PROPOSED AMENDMENTS
SENATE BILL 204

This proposed amendment is offered for the Committee's consideration by the Drug Strategy Committee and prepared by John Connor. It relates to the immunity provisions of Section 3, pages 4 and 5. During questioning on the bill at the time of hearing, it appeared from the answers of the Montana Trial Lawyers Association that the immunity provisions were being construed too broadly. It was never the intention of the Drug Strategy to allow a general immunity from liability. Section 3 is intended to apply only to suit by the defendant being supervised against the supervising agency or its employees directly related to the supervision. Acts outside the scope of supervision or supervising acts involving harm to others were not intended to be covered. The following amendment hopefully clarifies the Committee's intent.

Page 5, line 3.

Following: "."

Insert: "Such immunity shall apply only to lawsuits filed by the defendant against the supervising agency, its agents and employees, and only to acts alleged to have occurred during the course of supervision."

Exhibit #2
12 Feb 91
SB 204

Amendments to Senate Bill No. 204
First Reading Copy (White)
Requested by Senator Pinsoneault

For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1991

1. Page 2, line 9.

Strike: "\$50,000"

Insert: "\$1,000"

2. Page 2, lines 14 and 15.

Strike: "2 years"

Insert: "1 year"

3. Page 3, line 17.

Following: "randomly"

Insert: "not less than"

12 Feb 91
SB 204

Amendments to Senate Bill No. 204
First Reading Copy (White)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1991

1. Title, lines 7 and 8.
Following: "DRUGS;" on line 7
Strike: remainder of line 7 through "CIRCUMSTANCES;" on line 8
2. Page 4, line 20 through page 5, line 6.
Strike: section 3 in its entirety
Renumber: subsequent sections
3. Page 8, lines 21 and 24.
Strike: "through 4"
Insert: "and 3"
4. Page 8, line 25 through page 9, line 3.
Strike: section 7 in its entirety

Exhibit 3
2-12-91
SB 204

Amendments to Senate Bill No. 204
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane
February 12, 1991

1. Page 2, line 9.

Strike: "\$50,000"

Insert: "\$1,000"

2. Page 2, lines 14 and 15.

Strike: "2 years"

Insert: "1 year"

3. Page 3, line 17.

Following: "randomly"

Insert: "not less than"

4. Page 5, line 3.

Following: "."

Insert: "The immunity granted by this section applies only to lawsuits filed by the defendant against the supervising agency and its agents and employees and only to acts alleged to have occurred during the course of supervision."